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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHADERICK ANTHONY INGRAM,

Defendant and Appellant.

C079979

(Super. Ct. No. 14F03896)

A jury found defendant Chaderick Anthony Ingram guilty of human trafficking with intent to pimp and pander (Pen. Code, §§ 236.1, subd. (b), 266h, 266i)¹ and pandering (§ 266i, subd. (a)(5)). The trial court sentenced defendant to the middle term of 14 years on the human trafficking offense and the middle term of four years on the pandering offense, which was stayed pursuant to section 654.

On appeal, defendant contends the trial court prejudicially erred by failing to properly instruct the jury on all elements of the human trafficking offense. We conclude

¹ Undesignated statutory references are to the Penal Code.

the trial court erred, but find that the instructional error was harmless. Therefore, we affirm the judgment.

I. BACKGROUND

In light of the limited issue raised on appeal, we dispense with a recitation of the underlying facts, as they are unnecessary to the resolution of this appeal.

In February 2015, defendant was charged by felony information with human trafficking (§ 236.1, subd. (b)) with the intent to pimp (§ 266h) and pander (§ 266i), and pandering (§ 266i, subd. (a)(5)). Following his not guilty pleas, a jury trial commenced in June 2015.

At the close of trial, the trial court orally instructed the jury on the applicable law. As relevant to the claimed error, the court orally instructed the jury on the elements of the human trafficking offense. It instructed that: “To prove that the defendant is guilty of [human trafficking], the People must prove: [¶] 1. The defendant either deprived another person of personal liberty or violated that other person’s personal liberty; [¶] AND [¶] 2. When the defendant acted, the person intended to maintain a felony violation of pimping or pandering.” The trial court also orally instructed the jury on the elements of pandering as follows: “To prove that the defendant is guilty of [pandering], the People must prove that the defendant procured [the victim] to be a prostitute, or the defendant used promises, threats, violence, or any device or scheme to cause [the victim] to become a prostitute, and the defendant intended to influence [the victim] to be a prostitute.”

In addition, the trial court orally instructed the jury that: “The crimes charged in this case require proof of the union, or joint operation, of act and wrongful intent. For you to find a person guilty of the crime of human trafficking as charged in Count 1, that person must not only intentionally commit the prohibited act, but must do so with a specific intent and mental state. The act and specific intent and mental state required are explained in the instruction for that crime. [¶] For you to find a person guilty of the crime of pandering as charged in Count 2, that person must not only commit the

prohibited act, but must do so with a specific intent and mental state. The act and specific intent and mental state required are explained in the instruction for that crime.”

After closing arguments, the trial court provided the jury with a set of written instructions. The oral instructions set forth above were identical in all material respects to the written instructions provided to the jury, except that the written instruction on the human trafficking offense provided as follows: “To prove that the defendant is guilty of [human trafficking], the People must prove: [¶] 1. The defendant either deprived another person of personal liberty or violated that other person’s personal liberty; [¶] AND [¶] 2. When the defendant acted, the *other* person intended to maintain a felony violation of pimping or pandering.” (Italics added.) As to the second element of the human trafficking offense, the trial court should have instructed the jury that the People were required to prove that, “When the defendant acted, *he intended* to maintain a felony violation of pimping or pandering.” (See CALCRIM No. 1243, italics added.)

The jury found defendant guilty of both charged offenses. The trial court sentenced defendant to the middle term of 14 years on the human trafficking offense and the middle term of four years on the pandering offense, which was stayed pursuant to section 654.

Defendant filed a timely notice of appeal.

II. DISCUSSION

Defendant contends the trial court erroneously instructed the jury on the specific intent required to convict him of the human trafficking offense. According to defendant, the trial court prejudicially erred by instructing the jury that a conviction for human trafficking required a finding that he deprived the victim of her personal liberty, and, when he did so, *the victim* intended to maintain a felony violation of pimping or pandering. Defendant argues that by erroneously instructing the jury that the victim was required to possess a certain mental state, the jury returned a guilty verdict on the human trafficking offense without ever finding an element of that offense beyond a reasonable

doubt; namely, that he intended to maintain a felony violation of pimping or pandering when he deprived the victim of her personal liberty. The People concede that the instruction on the human trafficking offense was erroneous, but argue that the error was harmless in light of the court’s instructions as a whole, defense counsel’s concessions, and the jury’s guilty verdict on the pandering count. We agree that the instructional error was harmless.

“The due process clause ‘protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.’ [Citations.] Because due process principles require the prosecution to prove every element of the crime beyond a reasonable doubt, jury ‘instructions *completely removing* the issue of intent from the jury’s consideration may constitute a denial of federal due process.’ [Citation.] Conflicting intent instructions—where one instruction requires the prosecution to prove intent while another instruction eliminates that requirement—can operate the same way. [Citation.] Accordingly, ‘[i]f conflicting instructions on the mental state element of an alleged offense can act to remove that element from the jury’s consideration, the instructions constitute a denial of federal due process’ [Citation.] This is so even where the court’s instructions on the offense itself correctly explain the required intent, because we have ‘no way of knowing which of the two irreconcilable instructions the jurors applied in reaching their verdict.’ [Citations.]” (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1164-1165 (*Valenti*).) In this case, we need not determine whether the instructions “effectively ‘removed the mental state element’ from the jury’s consideration,” because even if the conflicting instructions amounted to a failure to instruct on an element of the offense, the error was harmless beyond a reasonable doubt. (*Id.* at p. 1165; see *People v. Haley* (2004) 34 Cal.4th 283, 314 [trial court’s mistaken instruction that a crime required general, not specific, intent is federal constitutional error].)

“We assess federal constitutional errors under *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824] (*Chapman*). Under *Chapman*, we must reverse unless the People ‘prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’ (*Ibid.*) Where the trial court fails to instruct on an element of the charged offense, however, the People must make a more substantial showing. That showing is governed by *Neder v. United States* (1999) 527 U.S. 1, 17-19 [119 S.Ct. 1827] (*Neder*), and by the California Supreme Court’s decision interpreting *Neder*, [*People v.*] *Mil* [(2012)] 53 Cal.4th 400 [(*Mil*)]

“ ‘*Neder* instructs us to “conduct a thorough examination of the record. If, at the end of that examination [we] cannot conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error—for example, where the defendant contested the omitted element and raised evidence sufficient to support a contrary finding—[we] should not find the error harmless.” ’ (*Mil, supra*, 53 Cal.4th at p. 417, quoting *Neder, supra*, 527 U.S. at p. 19.) On the other hand, the error is harmless if the People can prove beyond a reasonable doubt that the omitted element was uncontested and supported by such overwhelming evidence that no rational juror could come to a different conclusion. [Citations.]” (*Valenti, supra*, 243 Cal.App.4th at pp. 1165-1166.)

“[U]nder *Mil*, we must determine whether there is substantial evidence supporting a *contrary* finding on the omitted element. [Citation.] We therefore review the evidence in the light most favorable to defendant; we may not reweigh the evidence or resolve evidentiary conflicts. [Citation.]” (*Valenti, supra*, 243 Cal.App.4th at pp. 1166-1167.)

Here, during his opening statement, defense counsel explained the two elements of the human trafficking offense, and then stated, “The real issue of why you are here is . . . whether or not [defendant] deprived [the victim] of her personal liberty.” Defense counsel told the jury to focus on whether there was a deprivation of personal liberty, because “[t]hat’s what this case is about. [¶] In a couple days, I will come back and argue, no, there wasn’t, and ask you to find [defendant] not guilty of human trafficking.”

At the outset of his closing argument, defense counsel stated, “When I addressed you folks a few days ago, I asked you to, when listening to the evidence, ask yourself if there was a deprivation of liberty here, because that’s really what this case is about. ¶ [The prosecutor] said that I wouldn’t be addressing the pandering statute that much, and that’s true. I think the evidence is pretty overwhelming when it comes to pandering.” Defense counsel further stated that, “[T]his case is about . . . the first element of [the human trafficking offense], which requires that [the prosecutor] prove beyond a reasonable doubt that there was a substantial and sustained restriction of [the victim’s] liberty.” He continued, “I won’t argue that he intended to procure [the victim] as a prostitute. That . . . is pretty clear. But the issue here is whether there is a deprivation of liberty.” Later in his argument, defense counsel reiterated that the issue for the jury was whether the victim’s liberty was substantially restrained, and then said that he agreed 100 percent with the prosecutor that the letters defendant wrote in jail showed his intent to pimp and pander. He stated, “I’m pragmatic. I’m realistic. I can objectively look at the evidence, and realize that the law and evidence support a conviction for [pandering].”

On this record, it is clear that the trial court’s instructional error was harmless. Not only did defendant fail to contest the issue of intent with respect to the human trafficking offense, his trial counsel conceded the point during closing argument. Defense counsel also conceded that the evidence supported a conviction for pandering, which required, among other things, a finding that defendant intended to influence the victim to be a prostitute. In view of defense counsel’s concessions, the jury’s guilty verdict on the pandering offense, and the overwhelming evidence in the record supporting the intent element of the human trafficking offense, there is no reasonable or plausible basis to conclude the instructional error contributed to the jury’s verdict on the human trafficking offense. (*Mil, supra*, 53 Cal.4th at p. 417; see *People v. Flood* (1998) 18 Cal.4th 470, 504 [“One situation in which instructional error removing an element of the crime from the jury’s consideration has been deemed harmless is where the defendant

concedes or admits that element”]; *People v. Howard* (1992) 1 Cal.4th 1132, 1172 [ordinarily, instructional error is harmless when the factual question of intent was necessarily resolved adversely against defendant under other, properly given instructions].) We have thoroughly examined the record before us and conclude it contains no evidence that could rationally lead to a contrary finding on the intent element of the human trafficking offense. (*Mil, supra*, at p. 417; *Neder, supra*, 527 U.S. at p. 19.) Accordingly, because the record establishes beyond a reasonable doubt that the jury’s verdict on the human trafficking offense would have been the same absent the instructional error, we find that the error was harmless.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

BUTZ, Acting P. J.

/S/

HOCH, J.